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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

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Both by length of
experience and
character of its
other activities
The Corporation
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ped as a transfer
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Trends in Merger and Consolidation Statutes

There has been a marked trend during the past ten years toward the liberalization of laws governing the merger and consolidation of corporations.

During this decade, five states which previously had no provisions upon their statute books for merger or consolidation of any kind have enacted very comprehensive laws. These not only permit domestic corporations to be merged into or to be consolidated with each other; but they also allow their domestic corporations to be parties to either a merger or a consolidation involving corporations of other states and the surviving or the new corporation may be either a domestic corporation or a foreign corporation. These five states are Kansas, Massachusetts, Nebraska, New Hampshire and Oregon.

The addition of these five states has brought the number of states having such comprehensive merger and consolidation statutes to twenty-seven. These states now are Arkansas, California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Utah, Virginia, Washington and West Virginia.¹

These ten years have seen an enlargement of permissive types of merger or consolidation, in vary-

ing degrees, in the statutes of sixteen states—Arizona, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Maine, Minnesota, Missouri, Nevada, North Carolina, Ohio, Utah, Vermont and West Virginia.

Four states mentioned above have, during these years, provided for the merger of parent and wholly owned subsidiary companies by action of the board of directors of the parent company. These states are Delaware, Massachusetts, Nebraska and Nevada. The laws of New York have contained a comparable provision for many years. It is to be noted, however, that in Delaware, Massachusetts and Nebraska, the surviving corporation must be a domestic company.

In the remaining fifteen states, there are either no statutory provisions for merger or consolidation, or the existing provisions for merger and consolidation have not been amplified during the past decade and are not comprehensive, providing usually only for merger or consolidation of the domestic corporations. In the latter group are Alabama, Kentucky, Montana, New Mexico, North Dakota, South Carolina and Tennessee. The states in which there are no provisions for the merger or consolidation of business corporations are Iowa, Mississippi, Oklahoma, Rhode Island, South Dakota, Texas, Wisconsin and Wyoming.

¹ New Jersey permits all types of merger or consolidation previously mentioned except the consolidation of domestic and foreign corporations to form a *foreign* company; Virginia permits the merger or consolidation of domestic corporations and the merger or consolidation of domestic and foreign corporations where the resulting or surviving corporation is to be a domestic corporation.

Domestic Corporations

Delaware.

Federal Court considers allegation of unfairness of recapitalization plan involving alteration of rights of preferred stock. In *Barrett et al. v. Denver Tramway Corporation*, 53 F. Supp. 198, (The Corporation Journal, May, 1944, page 165), the District Court of the United States for the District of Delaware was called upon to determine the validity of a reclassification plan involving an alteration of the rights of the preferred stock. The plan, among other things, proposed the creation of prior preferred stock and an offer of such new shares to holders of present preferred in exchange for old shares by cancellation of existing claims to accrued dividends, but preserving the right to such dividends in the form of liquidating preference in the new stock. The court, in applying the Delaware Law came to the following conclusion: "As there can be no possible finding of fact from the evidence adduced here to which the Delaware symbols of 'constructive fraud' or 'bad faith' or 'gross unfairness' may attach, the legal formula established by Delaware compels the result that plaintiffs' charge of unfairness cannot be sustained." Upon appeal, the United States Circuit Court of Appeals, Third Circuit, also considered whether the plan was fair to the preferred stockholders and reached the following conclusion: "Scrutiny of the testimony and exhibits reveals that the facts justify the findings of the trial court in this respect. In line with the thought expressed by Judge Leahy in his opinion below, it may well be that the vexing problem of the elimination of accrued dividends on preferred shares in such a situation as this litigation presents is a matter for Delaware legislative action, but as the corporation law of that state, both statutory and decisional, now stands, it calls for affirmance of the judgment of the District Court." *Barrett et al. v. Denver Tramway Corporation*, 146 F. 2d 701. Andrew P. Quinn of Providence, R. I., and Stewart Lynch of Wilmington, Del., (Frank Licht of Providence, R. I., on the brief), for appellants. Erskine R. Myer of Denver, Colo., (Hastings, Stockly & Layton and Caleb R. Layton, 3rd, of Wilmington, Del., and Hughes & Dorsey of Denver, Colo., on the brief), for appellee.

Illinois.

Corporation permitted to maintain suit on contract entered into between date of dissolution and date of decree reinstating the corporation. Plaintiff Illinois corporation was dissolved in 1931 by an order of the Superior Court of Illinois for failure to pay its franchise taxes. Later, in the same year, a contract was entered into on behalf of the company with defendant to construct certain buildings in Kansas. In 1936, and prior to the time this suit was instituted in the United States Court of Claims for damages resulting from action by defendant in terminating plaintiff's right to continue with work under the contract, the order dissolving plaintiff was vacated by the

Superior Court and plaintiff was reinstated and reclothed with all its former powers as though the original decree of dissolution had never been entered. A question raised was whether plaintiff could maintain an action on a contract entered into between the date of the dissolution decree and of the decree setting it aside. The Court of Claims noted that the authorities were in conflict. It concluded that plaintiff could maintain the action, regarding defendant as in no position to complain concerning the effect of the decree setting aside the dissolution decree, and observing: "Only the State levying the taxes is interested in the nonenforcement of contracts entered into without prior payment of them. The other contracting party is not injured thereby. If defendant has breached its contract with plaintiff, certainly it should not escape liability therefor because the corporation did not pay its taxes when due, where the State, in consideration of the payment of penalties, has forgiven the corporation therefor." *Joseph A. Holpuch Co. v. United States*,* 58 F. Supp. 560. Norman B. Frost of Washington, D. C., (George M. Weichelt of Chicago, Ill., on the brief), for plaintiff. William A. Stern II, of Washington, D. C., and Francis M. Shea, Asst. Atty. General, for defendant. Commerce Clearing House Court Decisions Requisition No. 332898.

* Excerpts from this opinion are printed in *The Corporation Tax Service*, Illinois, page 1411.

Mississippi.

Common law right of inspection of corporate books and records held not abrogated by statute in mandamus suit by stockholder of domestic insurance company. In the Circuit Court, the plaintiff stockholder in a Mississippi insurance company of which individual defendants were executive officers, sought to compel defendants by mandamus to permit him, as a stockholder, to inspect the books and records of defendant corporation. The trial court had ruled that the common law right of a stockholder in a domestic insurance company to inspect the books and records of such a corporation had been abrogated by statute and had, further, found the petition insufficient because it failed to contain allegations concerning the good faith and proper motives of the petitioner. The Supreme Court of Mississippi reversed the lower court, making the following observation, after an examination of the statute which had been regarded as having abrogated the common law rule, Chapter 3, Vol. 4, Title 22, Sections 5616-5834, inclusive, Code of 1932, regulating insurance companies and prescribing the duties of the Commissioner of Insurance in regard to the examination thereof: "Instead of the Insurance Department having completely occupied the field as to the rights and remedies of the stockholder against his corporation, the statutes governing the duty of the Commissioner in regard thereto barely touch that field, and then only to give the stockholder the right to invoke the aid of the Commissioner when his company has reached a state of unsoundness—a statutory procedure provided for in addi-

tion to his common law authority for making an inspection of his own, as an incident to his ownership of stock." The court indicated that a stockholder's common law right, at proper and seasonable times, to inspect the books and records of the corporation, can be exercised only in good faith and for a just, useful or reasonable purpose germane to his interest as a stockholder; and that such right will not be enforced by the courts for speculative purpose or to gratify idle curiosity, and particularly when the purpose of the inspection is hostile to the corporation. In order to invoke the exercise of such judicial discretion, it is necessary for the defendants to plead and prove as an affirmative defense that the stockholder is actuated by bad motives or is otherwise improper, since good motives and a proper purpose will be presumed. *Sanders v. Neely et al.*, 19 So. 2d 424. Cameron & Wills of Meridian and Geo. E. Shaw of Jackson, for appellant. Niles Moseley and Creekmore & Creekmore of Jackson, for appellees. Greek L. Rice, Attorney General, and Wells, Wells, Lipscomb & Newman and Green & Green of Jackson, amici curiae.

Nebraska.

Charter amendments designed to change stock corporation into a co-operative company, ruled void. At the time plaintiffs purchased their stock in defendant corporation, it was organized as a stock company. Subsequently, in 1943, at a regularly called meeting of the stockholders, certain amendments to the articles were adopted which purported to change the company to a co-operative corporation and provided for the distribution of dividends on a patronage basis, i. e., on the basis of and in proportion to the amount of the business done with the corporation, rather than as dividends on the stock of the corporation. Plaintiffs instituted suit to obtain a decree enjoining a distribution of dividends in accordance with amendments to the articles of incorporation and by-laws on the ground that the amended articles and by-laws violated the contractual rights of minority stockholders and were not consistent with the nature, purposes and objects stated in the original articles and by-laws. A judgment for plaintiffs was affirmed by the Supreme Court of Nebraska, which observed: "It is self-evident that stockholders under the original articles will be deprived of dividends to which they were entitled thereunder. By their purchase of stock they acquired a contractual right to share in the net profits in the form of dividends on stock. An attempt to make a distribution of net profits on a patronage basis constitutes a violation of plaintiff's contract rights." "The amendments change the fundamental arrangement and plans of the corporation as it was organized when plaintiffs became stockholders and impair the contractual rights which they then acquired. It follows that the amendments and the proceedings of the defendants taken thereunder are void." The court also indicated that a delay of seven months by plaintiffs in questioning the validity of the amendments could not be deemed unreasonable where no effort was made to distribute dividends on a patronage basis until shortly before the suit was

brought. *Hueftle et al. v. Farmers Elevator et al.*, 16 N. W. 2d 855. Cloyd E. Clark of Elwood, for appellants. Butler, James & Morrison of McCook, for appellees.

New Jersey.

Complaint of stockholder, who opposed extension of corporate existence, seeking to recover value of his shares and interest in earned surplus and certain reserves, ordered dismissed. Plaintiff was a stockholder in defendant New Jersey corporation, organized in 1891 under the Corporation Law of 1875, which limited the existence of corporations created under it to 50 years. Defendant's period of existence being scheduled to expire on January 10, 1941, a stockholders' meeting was held in November, 1940, at which, by vote of two-thirds in interest of each class of stock, an amendment to the certificate of incorporation was adopted extending the existence of the corporation to January 10, 1991. Plaintiff voted his shares against the adoption of the amendment. He instituted this suit to recover the value of his shares and the proportionate share of earned surplus and reserve for depreciation and amortization represented by such stock. Defendant moved to dismiss the complaint. This motion was granted by the United States District Court, District of New Jersey, which noted that statutory authority for the extension of defendant's existence was to be found in the law and that the defendant took the necessary steps to extend the existence of the company. "The creation and maintenance by the corporation," said the court, "of a surplus account and a reserve account for depreciation and amortization in violation of plaintiff's disposition toward such action, gives rise to no complaint by way of breach of contract for which he can recover judgment." *Kelley v. American Sugar Refining Co.*, 58 F. Supp. 242. Lindabury, Depue & Faulks, by Josiah Stryker, of Newark, for defendant, for the motion. Wurts & Plympton, by William H. Wurts, of Hackensack, for plaintiff, opposed.

Chancery Court indicates "a stock certificate should not be issued in the names of 'A and/or B.'" In 1931, complainant, Celia Ward, subscribed for 35 shares of preferred stock of defendant corporation, requesting that the stock be issued in the name of her sister, Nora T. Russo and that she, Celia, would receive the dividends and control the stock during her lifetime, but her sister would have the stock after her death. The certificate was issued by the company to Celia and Nora "as joint tenants with right of survivorship and not as tenants in common." Celia received the dividends for thirteen years and retained possession of the certificate. This bill was filed, praying that the certificate be reformed so as to run to Celia "and/or" Nora. The company was indifferent to the rival claims of the sisters but was unwilling to re-issue the certificate in the form complainant desired. The Court of Chancery dismissed the bill, observing: "A stock certificate should not be issued in the names of 'A and/or B.'" "The term 'and/or,'" remarked the court, "has its uses, but it is

often employed for no better reason than that the draftsman has failed to think out his problem. Occasionally, the draftsman selects it because he prefers an ambiguous expression rather than a precise phrase which may have unforeseen consequences." The case was also considered from the point of laches, since thirteen years had passed since the certificate was issued, the court concluding that it was too late for complainant to complain. *Ward v. Jersey Central Power & Light Co. et al.*, 41 A. 2d 22. Samuel M. Cole of Jersey City, for complainant. Harry Silverstein of Millburn, for defendant Nora T. Russo. Autenrieth & Wortendyke of Newark, for defendant Jersey Central Power & Light Co.

New York.

Where voting stock of family corporation was equally divided as to corporate management, court refuses to entertain dissolution proceedings prior to the holding of scheduled election of directors. Petitioners, who applied for the dissolution of their corporation, were the owners of half the voting stock and respondents were the owners of the other half of the stock of a family corporation. The board of directors, elected in 1936 and held over in the absence of annual elections, consisted of the two respondents and one of the petitioners. The business, which had for years been prosperous, was now in jeopardy because of discord between the parties. Petitioners moved for an order enjoining the respondents from holding a proposed special meeting of the board of directors and from adopting resolutions rescinding certain existing resolutions, pending the determination of the dissolution proceedings. Respondents made a cross motion to vacate the order initiating the dissolution proceedings, upon the ground that the petition upon which the order was made failed to evidence the jurisdictional requirements of Section 103 of the General Corporation Law, in that it did not appear that the stockholders "cannot elect a board of directors." The respondents' motion was granted and petitioners' motion for an injunction was denied by the Supreme Court, Special Term, New York County, the court feeling that it would not be warranted, under the statute, in entertaining dissolution proceedings and that a scheduled annual meeting should first be held to determine whether directors can be elected and whether there may be an impasse justifying and necessitating a petition for dissolution. *Application of Landau et al.*, 51 N. Y. S. 651. David W. Kahn of New York City, for petitioners. Jay Leo Rothschild of New York City, for respondent.

Ch. 600, L. 1943, amending Sec. 36, Stock Corp. Law, and permitting reclassification of stock resulting in elimination of accumulated dividends on preferred stock, ruled valid. Plaintiff was the holder of 20 shares of the prior preferred stock of defendant which he acquired in January, 1944, after Section 36 of the Stock Corporation Law had been amended by Chapter 600 of the Laws of 1943 to authorize the amendment of a certificate of incorporation to provide for a reclassification of shares in such a way as to eliminate

cumulative preferred dividends which have accrued but which have never been declared, giving any stockholder not agreeing to the plan of reclassification the opportunity to dissent and to be paid the appraised value of his stock in cash under the provision of Section 38(9) of the Stock Corporation Law. The New York Supreme Court, New York County, opened an exhaustive opinion by stating that two questions were raised. The first was whether Section 36, as amended, was constitutional, and the second was whether, assuming the constitutionality of the amendment, "it applies to dividends which have accrued before as well as after its enactment (but which have not been declared)." Plaintiff, although present, did not vote against the plan at the stockholders' meeting at which it was approved, and filed no dissent or demand for appraisal of his stock. In this suit he sought to test the validity and applicability of the amendment to Section 36 so far as his stock was concerned. The plan provided for the exchange of outstanding cumulative prior preferred stock and of prior preferred stock for new issues and included the relinquishment of all accumulated dividends, which, in connection with the shares owned by plaintiff, amounted to \$62.50 per share. The court, after a careful examination into the nature of a stockholder's right to dividends which have accumulated but which have not been declared and development of the law in New York and other states in that connection, came to the following conclusion: "The 1943 amendment to Section 36 of the Stock Corporation Law is constitutional; it affects all stockholders, whether they acquired their shares prior or subsequent to its enactment; it relates to dividends accumulated and accrued (but not declared) before and after the amendment took effect." *McNulty v. W. & J. Sloane*, New York Supreme Court, New York County, March 3, 1945. Charles Goldenberg, for plaintiff. Hines, Rearick, Dorr & Hammond (Archie O. Dawson, of counsel), for defendant. Commerce Clearing House Court Decisions Requisition No. 337000.

Foreign Corporations

Pennsylvania.

Unlicensed foreign corporation, sued by citizen of New Jersey in Pennsylvania federal court, held not to have waived privilege not to be sued in federal courts sitting in Pennsylvania. In *Robinson v. Coos Bay Pulp Corporation*, decided by the United States District Court, Eastern District of Pennsylvania, February 2, 1944, (The Corporation Journal, June, 1944, page 186), it was ruled that the mere presence of a parent company within Pennsylvania did not constitute a basis for service of process upon its subsidiary, an unlicensed foreign corporation. There, the subsidiary appeared specially for the sole purpose of moving to vacate and set aside the attempted service upon it, which had been made upon an officer-director of defendant in the Eastern District of Pennsylvania. The motion was granted, upon evidence showing that defendant had not by its busi-

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When the attorney has the papers ready for the incorporation of a company, no matter in what state, or for its qualification as a foreign corporation in any state, we take them at that point and see that every clerical step necessary to effect incorporation or qualification is speedily performed.

If before drafting the papers the attorney wishes to verify the availability of the corporate name, we will have check made—in any state. If he wishes to study the question of best state for incorporation, or most suitable capital set-up, or soundest purpose-clauses, or most practicable provisions for management and control, we will

bring him extracts (obtained from official sources) from statutes of various states for comparison, or copies of the charters or by-laws, of other companies to study.

If the attorney is uncertain as to the necessity of his client's qualifying as a foreign corporation in any state, we will furnish him with official information and data to assist him in forming his conclusions.

After organization or qualification we provide the registered office, or agent, as may be required in the state—and keep the attorney informed of all state taxes and reports required, and forward any process served according to his directions.

CORPORATION TRUST

The Corporation Trust Company CT Corporation System And Associated Companies

Albany 1.....158 State Street
Atlanta 3.....57 Forsyth Street, N. W.
Baltimore 2.....10 Light Street
Boston 9.....10 Post Office Square
Buffalo 3.....295 Main Street
Chicago 4.....208 S. La Salle Street
Cincinnati 2.....441 Vine Street
Cleveland 14.....925 Euclid Avenue
Dallas 1.....1309 Main Street
Detroit 26.....719 Griswold Street
Dover, Del.....30 Dover Green
Hartford 3.....50 State Street

Jersey City 2.....15 Exchange Place
Los Angeles 13.....510 S. Spring Street
Minneapolis 1.....409 Second Avenue S.
New York 5.....120 Broadway
Philadelphia 9.....123 S. Broad Street
Pittsburgh 22.....535 Smithfield Street
Portland, Me. 3.....57 Exchange Street
San Francisco 4.....220 Montgomery St.
Seattle 4.....1004 Second Avenue
St. Louis 2.....314 North Broadway
Washington 4.....1329 E. St. N. W.
Wilmington 99.....100 West 10th Street

ness activities consented to a waiver of its privilege to decline to be sued in the state. These activities were limited to a sale effected by plaintiff, a citizen of New Jersey, as defendant's representative, to a Pennsylvania company in 1939, which was confirmed by the Oregon office of defendant. Upon appeal, the ruling of the District Court has been affirmed by the Circuit Court of Appeals, Third Circuit. That court noted that it was asked to "delimit the application of Section 51 of the Judicial Code, the federal venue statute," the pertinent provision of which is that "where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant." The court said: "Aside from the question of proper venue the jurisdiction of the court is beyond dispute, since the plaintiff and defendant are citizens of different states and the amount involved exceeds \$3,000." It observed that the question before it was "whether the defendant has waived the privilege conferred upon it by Section 51 not to be sued in the federal district courts sitting in Pennsylvania." "The district court assumed that the doing of business within the state by the defendant would have amounted to a waiver of the venue privilege but set aside and vacated the service of the writ and the complaint because it concluded that the activities of the defendant were not such as to amount to the doing of business. It is clear that the action of the district court was proper regardless of whether the defendant did a local business, since the defendant had not appointed an agent in Pennsylvania for service of process and, as we have seen, some such action was necessary to constitute a waiver. We think it but fair to observe, however, that were the rule otherwise we would be in entire accord with the conclusion of the district court that the defendant's activities did not constitute doing business in Pennsylvania." *Robinson v. Coos Bay Pulp Corporation*, United States Circuit Court of Appeals, Third Circuit, February 5, 1945. Commerce Clearing House Court Decisions Requisition No. 334510.

Washington.

Foreign corporation, employing salesman engaged in interstate commerce, held subject to service in proceedings under state unemployment insurance law. A question raised in a recent case before the State of Washington Supreme Court was whether a foreign corporation, engaged in Washington only in carrying on interstate business through a salesman whom it employed there, could be regarded as subject to the Washington unemployment insurance law in proceedings instituted by serving the salesman as the corporation's agent. Defendant corporation moved to quash the service and its motion was denied by the Commissioner. This decision of the Commissioner was affirmed by the county Superior Court. The Washington Supreme Court held that defendant was doing business in the state so as to make it amenable to process of the state courts and that the salesman was an agent upon whom service of process

could be made. It also ruled that the imposition upon the corporation of liability for contributions to the Washington unemployment compensation fund did not result in a burden upon interstate commerce, in so far as the business of the corporation was concerned. *International Shoe Company v. State et al.*, 154 P. 2d 801. Stern & Stern, Allen Orton and T. M. Royce, of Seattle, for appellant. Smith Troy and George W. Wilkins, of Olympia, for respondents. Commerce Clearing House Court Decisions Requisition No. 334163.

Taxation

Pennsylvania.

Federal law, stipulating state and local taxation of real property of certain Federal agencies, regarded as subjecting machinery to taxation under this provision. An Act of Congress, approved June 10, 1941, c. 190, Sec. 3, providing for the immunity from certain state taxation of the Reconstruction Finance Corporation and corporations created by it, of which Defense Plant Corporation was one, contained a stipulation that real property was to be subject to state and local taxation "to the same extent according to its value as other real property is taxed." The question on appeal was whether machinery owned by the Defense Plant Corporation in Pennsylvania was to be included as "real property" so as to be taxable under this provision. The Pennsylvania Supreme Court, Western District, concluded that the machinery was to be regarded as taxable, whether one took the view that Congress intended that the content of the term real property should be found in the law of the assessing district, (the law of Pennsylvania being that, whether fast or loose, machinery of a manufactory which is necessary to constitute it, and without which it would not be a manufactory at all, must pass for a part of the freehold), or whether one took the stand that the Congressional meaning was to be found in the prevailing view among the states, which was the same as that of Pennsylvania. *In re Defense Plant Corporation*,* 39 A. 2d 713. Sterling Newell and Henry J. Crawford of Cleveland, Ohio, and Harold F. Reed of Beaver, Pennsylvania, for appellant. John G. Marshall of Beaver, for appellant. Commerce Clearing House Court Decisions Requisition No. 329176. (*Appeal filed in the Supreme Court of the United States, February 24, 1945; Docket No. 979.*)

*The full text of this opinion is printed in *The Corporation Tax Service*, Pennsylvania, page 2302.

Wisconsin.

Wholly owned foreign subsidiary, selling its entire product, manufactured in Wisconsin, to foreign parent company, ruled not entitled to allocation of income or to deduct for payment to parent to cover cost of advertising by parent of subsidiary's product. Plaintiff Delaware company was a wholly owned subsidiary of another Delaware Cor-

poration. The entire product of plaintiff, evaporated milk put up in cans packed in cases, was purchased by the parent at a price of twenty-five cents per case less than advertised brands of evaporated milk could be purchased on the market at the time it was taken over. The milk was sold by the parent in its own retail stores under the parent's own private brand. However, the plaintiff subsidiary, in computing its income taxes for the years in question, to get its tax base, deducted from the amount received from the parent company for its product, as an expense of doing its business, the sum of \$170,000 which it paid the parent to reimburse the parent for sums paid by it for advertising the plaintiff's product. The Department of Revenue, the Board of Tax Appeals and the lower court included this sum of \$170,000 in the tax base on which plaintiff's income tax was computed. Plaintiff appealed from this decision. The Wisconsin Supreme Court affirmed the lower court's ruling on this point, observing that it was obvious, in view of the circumstances attending the final sale of plaintiff's product by its parent, that there was neither need nor occasion for plaintiff to go to any expense for advertising its product, and that if advertising was necessary to dispose of the product, this was solely the parent company's affair. Another question concerned whether plaintiff was entitled to an allocation of income within and without Wisconsin. The Wisconsin Supreme Court upheld the taxing authorities in their stand that the income of plaintiff was derived wholly from business transacted within the state and indicated that the mere keeping of books and doing "paper work" incidental to the disposition of the product outside the state, or going outside the state to buy supplies or even to make sales of the product, would not affect the source of the income. *American Stores Dairy Company v. Wisconsin Department of Taxation*,* 17 N. W. 2d 596. Lecher, Michael, Spohn & Best of Milwaukee, for appellant. John E. Martin, Atty. General, and Harold H. Persons, Asst. Atty. General, for respondent. Commerce Clearing House Court Decisions Requisition No. 334962.

*The full text of this opinion is printed in *The Corporation Tax Service*, Wisconsin, page 1769-66.



Appealed to the Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

INDIANA. Docket No. 40. *Hewit v. Freeman*, 51 N. E. 2d 6. (The Corporation Journal, November, 1944, page 233.) Indiana Gross Income Tax Act—application to proceeds from sales of corporate stocks and bonds by resident owner to nonresidents through brokers. Appeal filed, March 13, 1944. Jurisdiction noted, April 3, 1944. Argued, November 8, 1944.

NORTH DAKOTA. Docket No. 927. *Asbury Hospital v. Cass County et al.*, 16 N. W. 2d 523, which followed ruling in *Asbury Hospital v. Cass County et al.*, 7 N. W. 2d 438. (The Corporation Journal, October, 1942, page 232.) Constitutionality of North Dakota statute prohibiting corporation farming—application to non-profit hospital corporation. Appeal filed, February 6, 1945. Probable jurisdiction noted and case transferred to the summary docket, March 5, 1945.

OHIO. Docket No. 38. *The Hooven & Allison Company v. Evatt*, 51 N. E. 2d 723. (The Corporation Journal, February, 1944, page 111.) Ohio general property tax levied against goods grown in foreign country and transshipped by seller's agent from port of entry to buyer in Ohio. Petition for certiorari filed, March 11, 1944. Certiorari granted, April 10, 1944. Argued, November 7 and 8, 1944. Judgment reversed, April 9, 1945.

PENNSYLVANIA. Docket No. 872. *Commonwealth of Pennsylvania v. Ford Motor Company*, 38 A. 2d 329. (The Corporation Journal, April, 1945, page 333.) Franchise tax—unitary business. Petition for certiorari filed January 26, 1945. Motion to dismiss granted and appeal dismissed, per curiam, for want of a substantial Federal question, March 12, 1945. Petition for rehearing denied, April 9, 1945.

PENNSYLVANIA. Docket No. 873. *Commonwealth of Pennsylvania v. Quaker Oats Company*, 38 A. 2d 325. (The Corporation Journal, November, 1944, page 235.) Franchise tax—gross receipts allocation—sales offices in state—approval out of state. Petition for certiorari filed January 26, 1945. Motion to dismiss granted and appeal dismissed, per curiam, for want of a substantial Federal question, March 12, 1945. Petition for rehearing denied, April 9, 1945.

PENNSYLVANIA. Docket No. 979. *In re Defense Plant Corporation, (Defense Plant Corporation v. County of Beaver)*, 39 A. 2d 713. (The Corporation Journal, May, 1945, page 000.) State taxation—machinery owned by government agency and attached to freehold—taxation as real property. Appeal filed, February 24, 1945. Probable jurisdiction noted, March 26, 1945.

* Data compiled from CCH U. S. Supreme Court Service, 1944-1945.



Regulations and Rulings

INDIANA—A foreign corporation with its plant located in Indiana is required to pay the intangibles tax on notes and trade acceptances taken from customers which are mailed to the corporation at its New York, Indiana or Illinois offices, where they are recorded and immediately sent to the home office in Chicago. The intangibles had a business situs in Indiana and arose out of the business conducted in the state. (Opinion of the Attorney General, Indiana CT, ¶ 29-032.)

IOWA—Explosives used by mines, miners and quarrymen in mines and quarries are taxable under the provisions of the retail sales and use tax law. (Order of State Tax Commission, Memo. No. 8, Iowa CT, ¶ 64-501.)

MISSISSIPPI—The State Tax Commission has indicated that, for gross sales tax purposes, freight or transportation charges included in the invoice price of tangible personal property sold within the state are not subject to tax, but should be deducted from the gross amount of invoice price in order to arrive at the net taxable gross income. (Mississippi CT, ¶ 75-015.)

NEW YORK CITY—Physicians, roentgenologists, surgeons and dentists who, in the practice of their professions, and not as employees or operators of commercial X-ray laboratories, take roentgenographs or X-ray plates, are not deemed to be engaged in the sale of tangible personal property, even though they transfer possession of or title to the plates. (Ruling of Special Deputy Comptroller, New York CT, ¶ 220-258.)

NORTH CAROLINA—The Attorney General has ruled, in connection with the use tax, that replacement of a leased machine by another at a higher rental rate constitutes an independent leasing and should not be regarded as an extension of the first leasing. Since the transaction amounts to the securing of a different type of property at a different price, it is the same as rental of an additional machine, and it cannot be said that there is a continuation of the first transaction. Therefore, the lessor is liable for the use tax on the full rental value of the second machine. (Opinion of Attorney General to the Commissioner of Revenue, North Carolina CT, ¶ 78-010.)

A company selling coal to its employees on a nonprofit basis must collect the 3% retail sales tax on such sales and remit the tax to the Commissioner on a monthly basis as prescribed by law. (Opinion of the Attorney General, North Carolina CT, ¶ 60-061.)

OHIO—When the consumer is a foreign nation, retail sales of tangible personal property in Ohio, or the storage, use or other consumption of tangible personal property in that state are not subject to the State sales or use taxes. (Ohio CT, ¶ 69-018.)

From and after the effective date of the amendment of Sec. 1083-18, G. C., a foreign corporation organized for profit cannot be granted a license to transact business in Ohio if either the word "engineer" or "engineering" forms a part of its corporate name, regardless of the time when the use of such name was authorized in the state of its incorporation. (Opinion of the Attorney General, Ohio CT, ¶ .011.)

Some Important Matters for May and June

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Income Tax Return and Payment due on or before May 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before May 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due on or before June 1.—Dominion Companies.

FLORIDA—Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

IOWA—Report of Transfers of Stock due on or before July 1.—Domestic Corporations.

KENTUCKY—Statement of Existence due on or before July 1.—Foreign Corporations.

Annual Verification Report as to Process Agent due on or before July 1.—Domestic and Foreign Corporations.

LOUISIANA—Income Tax Return due on or before May 15.—Domestic and Foreign Corporations.

MAINE—Annual Franchise Tax Return due on or before June 1.—Domestic Corporations.

MICHIGAN—Report of Unclaimed Moneys, Securities, Credits, etc., due on or before June 30.—Domestic and Foreign Corporations.

MISSOURI—Annual Franchise Tax due on or before May 15.—Domestic and Foreign Corporations.

Income Tax due on or before June 1.—Domestic and Foreign Corporations.

MONTANA—Annual Statement due within two months from April 1.—Foreign Corporations.

Annual License Tax based on net income due on or before June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Franchise (Occupational) Tax due on or before July 1.—Domestic Corporations.

- NEVADA—Annual List of Officers and Designations and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.
- NEW JERSEY—Franchise Tax Return and Tax due on or before May 15.—Domestic Corporations.
- NEW MEXICO—Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.
- NEW YORK—Annual Franchise (Income) Tax Return (Form 3-CT—Article 9A, Tax Law) and payment of one-half of tax due on or before May 15.—Domestic and Foreign Business Corporations, Holding Companies and Investment Trusts.
- OREGON—Annual Report due during June.—Domestic and Foreign Corporations.
- RHODE ISLAND—Corporate Excess Tax due on or before July 1 and delinquent after July 15.—Domestic and Foreign Corporations.
- SOUTH DAKOTA—Annual Report due between May 1 and June 1.—Domestic Corporations.
- TENNESSEE—Annual Privilege (Franchise) Tax Return and Payment, Annual Report and Tax and Excise Tax Report and Tax due on or before July 1.—Domestic and Foreign Corporations.
Report of Dividends paid to residents due on or before July 1.—Domestic and Foreign Corporations.
- UNITED STATES—Second Installment of Income Tax due June 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.
- VIRGINIA—Income Tax due June 1.—Domestic and Foreign Corporations.
- WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.
- WEST VIRGINIA—License Tax Statement due on or before July 1.—Domestic Corporations.
Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.
Fee to State Auditor as Attorney in Fact due on or before July 1.—Foreign Corporations and those Domestic Corporations whose principal place of business or chief works are located in other states.
- WYOMING—Annual Statement and License Tax due on or before July 1.—Domestic and Foreign Corporations.



The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, 5, N. Y.

What Constitutes Doing Business. (Revised to October 1, 1943.) A 181-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Cross Hauling . . . and the Answer, Spot Stocks. Explains how the possible wartime restrictions on cross-hauling point the way to volunteer peacetime economies through the keeping of warehouse stocks at strategic shipping points.

Amendments to Delaware Corporation Law, 1943. Contains complete text of the amendments adopted at the 1943 session of the legislature, giving for each one a brief explanation of its purpose and effect.

Contracts You Can't Enforce. Interesting case-histories which show advisability of contractor getting lawyer's advice before undertaking construction work outside his home state, even for federal government.

After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

What! We Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent.

Judgment by Default. Gives the gist of *Rarden v. Baker* and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

THE CORPORATION TRUST COMPANY

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THE CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost (\$1.50).

[While no more binders are at present available, their production will be resumed as soon after the war as possible.]

